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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. .....

ALBERT BLOOM,

Petitioner,

—v.—

CHARLES LUNDBURG, TROOPER,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

Petitioner Albert Bloom prays that a writ of certiorari issue to review the final judgment of the Supreme Court of Errors of Connecticut. The decision of the Supreme Court of Errors affirmed the judgment of the Superior Court for Fairfield County, Connecticut, which dismissed petitioner's writ of habeas corpus initiated to attack the validity of the Connecticut Governor's extradition warrant.

Opinions Below

The opinion of the Superior Court, which is the Connecticut trial court, is printed as Appendix A to this petition (Appendix 1a). It is unreported. The opinion of the Supreme Court of Errors, which is the highest Connecticut appellate court, is printed as Appendix B to this petition (Appendix 8a). It is reported at Vol. XXIII No. 1 Connecticut Law Journal 3 (December 5, 1961).

Jurisdiction

The judgment of the Supreme Court of Errors of Connecticut was entered, *in banc*, on November 21, 1961. The opinion of the court below was announced and copies were distributed to counsel on December 5, 1961. The effective date of judgment is December 5, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

Constitutional and Statutory Provisions Involved

Petitioner maintains that the judgment of the court below permits his extradition in violation of the U.S. Constitution and the laws of the United States. The constitutional provision relating to extradition is Article IV, §2, Clause 2 (Appendix 18a). The statutory provision relating to extradition is 18 U.S.C. §3182 (Appendix 18a).[1]

Petitioner also relies upon the Due Process Clause of the Fourteenth Amendment (Appendix 19a), in addition to the constitutional and statutory provisions regarding extradition, to challenge the effect of certain documents held by the Connecticut trial court (but not passed upon by the Supreme Court) to be waivers of petitioner's right to challenge his extradition to New York.

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[1] References are indicated as follows:

References to the numbered pages of the appendix to this petition (Appendix a).

References to the numbered paragraphs of the Finding made by the Connecticut Superior Court for purposes of the appeal to the Supreme Court of Errors (F.).

References to the numbered pages of the certified printed record in the Connecticut Supreme Court of Errors and the proceedings in that court after the printing of the record (R.).

References to numbered pages of the appendix to petitioner's brief filed in the Supreme Court of Errors (Pet. St. Ct. App.).

Questions Presented

This action involves the validity of a Connecticut extradition warrant ordering petitioner's return to New York from Connecticut. It is this warrant by which petitioner is currently restrained of his liberty. The questions presented are:

1. When the supporting judgment furnished by the demanding state demonstrates that petitioner had served his entire validly imposed sentence—the sentence recited in the judgment being in excess of the permissible sentence—are the courts of the asylum state permitted to utilize the entire judgment and inquire beyond the recited sentence in the judgment to determine if petitioner is substantially charged with a crime and is a fugitive from justice within the constitutional and statutory provisions regarding extradition?

2. When the supporting documents furnished by the demanding state demonstrate (a) that petitioner was never charged as a second offender in the demanding state and (b) that petitioner had served in excess of the sentence for a first offender when released by the New York authorities four years before his apprehension in Connecticut, is petitioner one substantially charged with a crime and a fugitive from justice within the constitutional and statutory provisions regarding extradition?

3. When the demanding state initiates an extradition request, can petitioner who had served his entire valid sentence in the demanding state before his release be foreclosed from exerting defenses to his extradition because of the execution of purported waivers, one of which is valid only "during the period of my parole" and the other of which was executed while petitioner was in prison and without the aid of counsel?

Statement

The Facts Material to the Federal Questions

Petitioner Albert Bloom—as the Connecticut trial court specifically found (F. 2, R. 14) and as the Connecticut Supreme Court recognized (Appendix 9a)—has been incarcerated a total of 14 years, nine months and 22 days for a 1937 New York forgery conviction. This conviction involved a $22.50 check.[1] New York now seeks his return to serve the balance of a twenty year maximum sentence imposed for a crime which, as the supporting documents demonstrate, carried a ten year maximum (Pet. St. Ct. App. 11, 17). The Governor of Connecticut, honoring the New York request, issued his extradition warrant (Pet. St. Ct. App. 5). The instant habeas corpus action followed petitioner's arrest on the Connecticut Governor's warrant.[2]

Petitioner's contention that he is not substantially charged with a crime and is not a fugitive from justice within the constitutional and statutory provisions regu-

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[1] Specific facts found by a Connecticut trial court are, under Connecticut appellate procedure, part of the Finding, which is a lengthy recapitulation of events in the trial court prepared by the trial judge, after receipt of a draft finding by the appellant and a counterfinding by the appellee. CONNECTICUT PRACTICE BOOK §389 (1951 Ed.); Maltbie, CONNECTICUT APPELLATE PROCEDURE §§129, 130 (2d Ed. 1957). The Finding in this case, which included the subordinate facts found by the trial court, the conclusions reached by the trial court and the claims of law of petitioner, is printed in the record prepared for the Supreme Court of Errors (R. 14-20).

[1] The indictment sets forth the forged check involved (Pet. St. Ct. App. 13).

[2] This action was initiated pursuant to §54-166 Conn. Gen. Stat. (1958 Rev.), which provides for the use of the writ of habeas corpus to challenge an extradition warrant. Pursuant to the initial writ issued by the Superior Court, notice by registered mail was given to the agents of the demanding state (R. 2).

lating extradition, is grounded upon facts apparent on the face of the supporting documents furnished by the Governor of New York to the Connecticut Governor.

On September 28, 1936 petitioner was indicted in the Superior Court of Westchester County, New York, for forgery in the second degree involving a check in the amount of $22.50 (Pet. St. Ct. App. 13). In the indictment petitioner was not charged with having previously been convicted of a felony (Pet. St. Ct. App. 13-15). As the final judgment in the New York criminal proceeding amply demonstrates, petitioner was not charged by either a subsequent information or an indictment as being a second offender (Pet. St. Ct. App. 16; Appendix 22a). Nevertheless, on March 23, 1937 on a plea of guilty to the crime of forgery in the second degree, petitioner was sentenced as a second offender to a maximum term of 20 years (Appendix 9a, 22a).

The crime of forgery in the second degree, for which petitioner was imprisoned on March 23, 1937, was punishable at that time under 888 of the New York penal law

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Although in the possession of respondent at the time of the hearing in this matter, these documents were introduced on behalf of petitioner in the Connecticut trial court. The Connecticut trial court specifically identified the supporting documents as petitioner's Exhibit A in the Finding (F. R. 16). Because petitioner's case is based in large measure on these documents, the significant portions of the documents were printed in the appendix to petitioner's brief in the Supreme Court of Errors (Pet. St. Ct. App. 7-16). That appendix, parenthetically referred to in this petition as Pet. St. Ct. App., has been certified by the clerk of the court below and is being filed with this petition so that the supporting documents themselves are available for the convenience of the Court.

Because of the significance of the 1937 New York judgment, it is reprinted in this petition as Appendix F. Appendix 22a) for the convenience of this Court. It also appears, with the other primary documents supporting the extradition request, in the appendix to petitioner's brief filed in the Supreme Court of Errors (Pet. St. Ct. App. 16).

which provides for "imprisonment for a term not exceeding ten years." (Pet. St. Ct. App. 11, 17). This the court below specifically acknowledged (Appendix 11a).

After having served a total of 14 years, nine months and 22 days (F. 2, R. 14; Appendix 9a) for the offense which carried a maximum imprisonment of 10 years, petitioner on December 6, 1954 was released by the New York parole authorities (F. 2, R. 14).[1] After his release, petitioner, in 1958, was convicted in the federal District Court in Massachusetts for unlawful possession of stolen mail and forgery and uttering United States Treasury checks (F. 4, R. 15; Appendix 9a) and was sentenced to imprisonment for two years at the Federal Correctional Institution at Danbury, Connecticut (F. 4, R. 15; Appendix 9a).

After petitioner's arrest for the federal offense, the New York parole authorities requested his extradition (F. 5, R. 15; Appendix 9a). And after petitioner's release from the federal institution,[2] the New York Governor formally demanded extradition (F. 12, R. 17; Pet. St. Ct. App. 7). It was with this demand that the New York Governor forwarded the supporting documents upon which New York claims a right to extradite petitioner. Upon New York's

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[1] Immediately prior to petitioner's release he was given permission to leave New York and live in Boston, Massachusetts, and at that time he agreed that if he should be arrested "*during the period of my parole* I will waive extradition" (F. 3, R. 14). (Emphasis added.)

[2] While incarcerated at the Federal Correctional Institution at Danbury, petitioner, without the aid of counsel, on May 6, 1958 signed a document entitled "Waiver of Extradition" in which it was stated that he agreed to "waive all legal and other rights I have in the State of Connecticut to oppose extradition to the State of New York." Respondent offered no evidence to indicate what were the circumstances surrounding the signing of the May 6, 1958 document which was acknowledged by the warden of the federal institution (F. 6, R. 15).

demand, the Connecticut Governor issued his warrant, the validity of which is at issue in this proceeding.

The Manner of Raising the Federal Questions

Petitioner's contention that he cannot be extradited because he was not one substantially charged with a crime and was not a fugitive from justice within the U.S. constitutional and statutory provisions relating to extradition was initially raised in his amended application for the writ of habeas corpus (R. 1), upon which the trial in this case proceeded on May 20 and May 23, 1960. This claim was founded upon the fact—apparent from the New York supporting documents (Pet. St. Ct. App. 7-16)—that since petitioner was never charged as a second offender and had served in excess of the maximum sentence which could be imposed upon him, he, therefore, had no unserved sentence obligation to New York when he was released in 1954 (R. 18-19). This claim was reasserted in petitioner's formal claims of law (F. 19, R. 18-19).

Petitioner's contention that the purported waivers of his right to exert defenses to his extradition were invalid was raised at the trial after respondent's assertions of the waivers in his return to the writ (R. 3, 4), as well as in petitioner's formal claims of law (F. 21, 22, 23; R. 19).

After hearing, the Connecticut Superior Court dismissed the writ of habeas corpus, ruling that the New York Governor's certification that petitioner was a parole violator was a "sufficient" basis for the Connecticut Governor to issue his extradition warrant (R. 9; Appendix 5a). In making this decision, the trial court foreclosed judicial inquiry of petitioner's claim that his sentence had expired before his "parole" in New York and that he was not, therefore, one substantially charged with a crime and was not a fugitive from justice. The trial court also concluded

that petitioner had relinquished by the purported waivers, neither of which were executed before judicial authority—all "legal and other rights that he had in the State of Connecticut to oppose extradition to the State of New York." (F. 15, R. 18).

On appeal, the Connecticut Supreme Court of Errors, although for different reasons, affirmed the trial court's judgment. The court below recognized that "It is the claim of the plaintiff that the maximum penalty for a conviction of the crime of forgery in the second degree in New York is imprisonment for ten years and that he has served in excess of that term and, therefore, is not a fugitive from justice subject to extradition to New York." (Appendix 9a). However, ignoring the fact that the New York judgment demonstrates that petitioner had been given a second offender sentence without being charged as a second offender, the court below *reframed* petitioner's position in this manner:

> "He [petitioner] contends that the requisition and supporting papers from New York do not include any copy of an information or indictment charging him with being a second offender; that, therefore, the only valid sentence which could have been imposed on the basis of these papers was that applicable to a first offender; and that the lack of a copy of an information or indictment charging him with being a second offender is vital to the extradition demand. There is no such information or indictment among the papers submitted to the Governor of Connecticut. Whether one is essential to warrant extradition is the sole question we have to decide." (Appendix 10a).*

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*Significantly, this emphasis on the presence of *a copy* of the information is not predicated upon any of petitioner's claims of law (R. 18) or anything in petitioner's brief in the Supreme Court

The Connecticut Supreme Court answered this "sole question" with its ruling that "[A] copy of the information upon which he was prosecuted as a second offender was not essential to the validity of the extradition request." (Appendix 13a).

The court below made *no* reference to the fact that the New York judgment and other supporting papers affirmatively demonstrate that petitioner was sentenced as a second offender without having been charged as a second offender (Pet. St. Ct. App. 16; Appendix 22a). The result was a judgment by the court below which affirmed a trial court judgment permitting petitioner's extradition even though the supporting documents establish (1) that petitioner had served a total of 14 years, nine months and 22 days for a crime which carried a ten year maximum sentence, (2) that petitioner had no unserved sentence obligation to New York when he was released in 1954, and (3) that he was not, therefore, substantially charged with a crime and was not a fugitive from justice within the constitutional and statutory provisions regarding extradition.

The court below did not consider the waiver issue, noting that, "As the waivers are not material to the principal issue and the defendant [respondent] has not urged their consideration we shall disregard them." (Appendix 8a).

The judgment in the court below permitting petitioner's extradition was entered on December 5, 1961. Justice

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of Errors. To demonstrate this petitioner had certified by the clerk of the court below his brief and has filed that copy of the brief with this petition. The issues presented in petitioner's brief in the court below and the significant claims of law are set forth in Appendix E (Appendix 21a). Petitioner's claim is not based upon New York's failure to forward a copy of a second offender information, but upon the fact that the New York judgment demonstrates that petitioner was sentenced as a second offender without being charged as one.

Murphy of that court subsequently entered an order staying the judgment to permit the filing of the instant petition in this Court (Appendix 17a).

Reasons for Granting the Writ

This petition presents significant, fundamental issues of both narrow and broad scope relating to the application of the federal constitutional and statutory provisions regarding interstate extradition. Review of the decision below by this Court is called for (1) because this Court has never delineated with precision the proper scope of review in this area involving the relation of the states, one to another, in our federal system; (2) because this Court's general pronouncements regarding extradition have been disregarded, in effect, by the judgment of the court below and; (3) because there exists a conflict, in principle, between the judgment of the court below and decisions of other state appellate courts.

I. Not in a decade has this Court had before it a case involving an interstate extradition matter.[10] Never has it decided the narrower issue—but an issue of wide import in view of our federal system—raised by this petition. This Court has long recognized (1) that only a person substantially charged with a crime by the demanding state can be extradited and that (2) whether one is substantially charged with a crime is a question of law, always open on the face of the demanding papers to judicial inquiry in a habeas corpus action. *Roberts v. Reilly*, 116 U.S. 80, 95 (1885). What the Court has not decided previously is the exact scope of review available in the demanding state in determining this legal issue.

[10] *Sweeney v. Woodall*, 344 U.S. 86 (1952).

The instant petition raises that narrow issue. Here the judgment submitted by the demanding state recites a sentence in excess of the permissible sentence authorized under the law of the demanding state. Examination of the *entire* 1937 New York judgment demonstrates that petitioner was not charged as a second offender although he was sentenced as one. Only if courts in the asylum state are restricted to the precise stated sentence in the judgment and are not allowed to examine the other portion of the judgment which itself demonstrates the impropriety of the sentence imposed, can the ruling of the court below stand.

There is a dual significance to this scope of review issue raised by this petition. The measure of judicial inquiry to be utilized in determining whether one is substantially charged with a crime for extradition purposes is applicable to habeas corpus actions involving extradition matters in both the state courts and the federal district courts. *Roberts* v. *Reilly*, *supra*, 116 U.S. at 94.

It is true that the court below framing the "sole question" as relating to the need for the presence of the second offender information among the supporting papers did not come to grips with the scope of review issue in its opinion.[1] Nevertheless, the court's holding determined that issue. For, as noted, the entire New York judgment and the other supporting documents affirmatively demonstrate that petitioner was not charged as a second offender. The result was a sentence twice as great as the law permitted

[1] The Connecticut trial court did vaguely discuss this issue, however. It adopted a scope of review even more limited than the one endorsed, *sub silentio*, by the Connecticut Supreme Court in its holding. The Superior Court ruled that the New York Governor's "certification" that petitioner was a parole violator was a "sufficient" basis for the Connecticut Governor to issue his warrant of extradition. R.9, Appendix 5a. By adopting such a constricted view, the Superior Court, in effect, limited its scope of inquiry to a determination of the validity of the signatures of the two governors involved.

because under the law of the demanding state—and this is not disputed by the courts below or respondent—failure to charge one as a second offender clearly precluded the court from imposing a second offender sentence. *People v. Gonaska*, 244 N.Y. 451, 155 N.E. 737 (1927); *People ex rel. Shepard v. Martin*, 267 App. Div. 1041, 49 N.Y.S. 2d 697 (1944); *People v. Kaminski*, 273 App. Div. 971, 78 N.Y.S. 2d 451 (1948). The sole reliance by the court below on the recited sentence in defiance of the undisputed facts on the face of the entire judgment and other supporting documents presents to this Court the issue of the proper scope of review.

It is, then, the effect, not the precise language, of the opinion of the court below which presents the narrow issue concerning the proper scope of review. But the failure of the court below to discuss the controlling issue behind its holding should not prevent this Court from reviewing the judgment below and determining the proper scope of review to be utilized by both federal and state courts in this area which has broad significance to the relationship of the states to each other. Only a determination by this Court can authoritatively delineate the extent of the inquiry, under the Constitution and laws of the United States, which both federal and state courts should adopt in ruling upon the validity of one state's demand upon a sister state for the return of a claimed fugitive.

II. While the narrow issue of the precise scope of review presented by this petition is one of first impression before this Court, a broader issue presents a principle long established by the decisions of this Court. That the judgment of the court below is in conflict with these decisions is another reason why this Court should issue its writ of certiorari.

As this Court recognized almost sixty years ago, there can be no lawful compliance with a demand for extradition

until it appears "that the person demanded is substantially charged with a crime against the laws of the State from whose justice he is alleged to have fled . . . ." *Hyatt v. Corkran*, 188 U.S. 691, 709-10 (1903). The *Hyatt* pronouncement was a reaffirmation of this Court's unanimous decision in *Roberts v. Reilly, supra*, 116 U.S. at 95.

The supporting documents supplied by the demanding state clearly demonstrate that petitioner was indicted for forgery in the second degree (Pet. St. Ct. App. 13-15). The formal judgment demonstrates that no information was filed charging petitioner as a second offender (Pet. St. Ct. App. 16; Appendix 22a). As the New York Board of Parole itself pointed out in the demanding papers (Pet. St. Ct. App. 11), the crime of forgery in the second degree was punishable "under Section 888 of the Penal Law," which provides for "imprisonment for a term not exceeding ten years" (Pet. St. Ct. App. 17; Appendix 11a). By permitting petitioner's extradition when the demanding papers demonstrate that petitioner had no unserved sentence obligation to the State of New York when he was voluntarily released by New York in 1954, the judgment of the court below permits petitioner's extradition even though he is not substantially charged with a crime and conflicts with the principle firmly established by this Court in *Hyatt* and *Roberts*.

Petitioner is well aware that this Court has indicated that inquiry in habeas corpus proceedings is limited when extradition warrants are at issue. In the case at bar, however, petitioner does not seek to set forth the statute of limitations, *Biddinger v. Commissioner of Police*, 245 U.S. 128, 131 (1917), or insanity, *Drew v. Thaw*, 235 U.S. 432, 434 (1914), or the unconstitutionality of the demanding state's statute, *Pettibone v. Nichols*, 203 U.S. 192, 205 (1906). Rather petitioner maintains that since he has no unserved sentence obligation, he is not one substantially charged with a crime.

In another respect the judgment of the court below is in conflict with principles established by this Court. Although the Connecticut Supreme Court specifically did not pass upon the waiver

III. Petitioner does not dispute the right of the Connecticut Governor to extradite a parole violator who is obligated to serve an unexpired portion of a sentence imposed in a demanding state. What petitioner has objected to throughout this proceeding, however, is his extradition when the undisputed facts—apparent from the supporting documents examined under a proper scope of review—amply demonstrate that petitioner is under no unsatisfied sentence obligation to New York and, therefore, is not substantially charged with a crime and is not a fugitive from justice within the meaning of the provisions regulating interstate extradition. The judgment of the court below rejecting petitioner's argument in this regard represents a conflict, in principle, with decisions of other state appellate courts.

Petitioner concedes that there is no precise clash of language between the opinion of the court below and opinions of other state appellate courts, but does maintain that the Connecticut courts' holding clashes with the decisions or language of other state appellate courts.

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issue presented by this case (Appendix 8a), it affirmed the judgment of the Connecticut trial court which held that petitioner had "waived all legal and other rights that he had in the State of Connecticut to oppose extradition to the State of New York" (F. 15, R. 18). The purported waivers were not executed in the presence of any judicial authority. The first, executed after petitioner had served his entire valid sentence, was on its face applicable only "during the period of my parole" (F. 3, R. 15); the other was signed while petitioner was in prison at Danbury, Connecticut, and without the benefit of counsel (F. 6, R. 15). Decisions by this Court are clear that waivers purporting to express an intelligent relinquishment of important rights must be accepted by judicial authority. *Zerbst* v. *United States*, 281 U.S. 276, 312-313 (1930); *Adams* v. *U.S. ex rel. McCann*, 317 U.S. 269, 277 (1942), *rehearing den.* 317 U.S. 713; *Johnson* v. *Zerbst*, 304 U.S. 458, 464 (1937); *Glasser* v. *United States*, 315 U.S. 60, 71 (1942), *rehearing den.* 315 U.S. 827; *Moore* v. *Michigan*, 355 U.S. 155 (1957). There is, therefore, an added conflict with the decisions of this tribunal insofar as the waiver issue is presented.

In *Ex Parte Weinhause*, 202 Mo. App. 245, 216 S.W. 548 (1940), the Missouri asylum court carefully examined the law of the demanding state and concluded that the recitations in the demanding papers were not conclusive on the question of whether or not there was an unsatisfied sentence to be served:

> "From the *testimony*, it clearly appears that the relator was not amenable to further punishment. It is manifest that such was the understanding of the probation officer and the state to its attorney. We can give no other *interpretation to the evidence* than that the prosecution for the offense had come *to an end by the proceeding we have recited*. If a person commits an offense in a demanding state and is afterwards apprehended in another state no one would say that he should be extradited if it appeared he had paid the penalty assessed for such offense by suffering the punishment therefor; *act that is, in effect, what relator has done in this instance*." *Ex Parte Weinhause*, 202 Mo. App. 245, 216 S.W. 548, 550 (1940). (Emphasis added.)

In the case at bar, petitioner, like the relator in *Weinhause*, has paid the penalty properly assessed. The upholding of petitioner's extradition by the court below, then, is in contrast with the result and opinion in the *Weinhause* case.

In *Commonwealth ex rel. Hagan v. Dye, Warden*, 373 Pa. 508, 96 A. 2d 129, 131 (1953), the petitioner, an escapee, failed to establish that he was not a fugitive from justice because "He does not contend that his sentence was invalid." The Supreme Court of Pennsylvania pointed out that in order to establish the fact that petitioner was not a fugitive as stated in the requisition, the burden was on him to prove that "his sentence has been served." 96 A. 2d

at 131. Significantly, what the petitioner in *Hacy* failed to prove, petitioner here has proved: that he is under no obligation to the authorities of the demanding state because his prior valid sentence has been served. The upholding of petitioner's extradition by the court below, then, is in contrast to the language used by the Pennsylvania court in *Hacy*.

And in *Brown v. Grimes*, 214 Ga. 338, 104 S.E. 2d 907 (1958), the petitioner, as petitioner in the case at bar, produced in evidence the supporting documents upon which the extradition warrant was issued. There, as here, the supporting documents amply demonstrate that petitioner had served, at the time he left prison in the demanding state, more than the valid sentence imposed for the crime for which he was originally convicted. The Georgia court, noting that the crime of escape "could not be committed after a sentence had expired," 104 S.E. 2d at 909, concluded that Brown was not substantially charged with a crime for extradition purposes. As a result, the warrant for extradition was invalidated. The Court added:

> "The question as to whether or not the extradition warrant under which an alleged fugitive from justice is held is supported by documents from the demanding state legally sufficient to authorize his extradition *is always open to judicial inquiry* in a habeas corpus proceeding." 104 S.E. 2d at 909 (Emphasis added).

The Connecticut courts' action in this case, then, conflicts with the decision of the Georgia court in the *Brown* case.

In view of the fact that the principles regarding extradition are applied by state as well as federal courts acting primarily pursuant to the federal provisions upon which petitioner relies, this clash, in principle, between the judgment below and the decisions and language of other state

tribunals affords an added basis for this Court to issue its writ of certiorari, even though an indirect conflict of this type would not ordinarily attract the attention of this Court.

CONCLUSION

The judgment of the court below permits petitioner's extradition to serve the balance of a twenty year sentence imposed for a crime involving a $22.50 check even though the documents establish that he had served his validly imposed sentence when released by New York. Unhampered by an authoritative review by this Court, the decision of the court below will (1) generate wasteful controversy in both federal and state courts and (2) leave intact a patently incorrect construction of important constitutional and statutory provisions which effect the relation of the states to each other.

For these reasons, then, this Court should—and petitioner respectfully requests that it does—issue its writ of certiorari to review the judgment of the court below.

Respectfully submitted,

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Dated: February 5, 1962.

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APPENDIX A

MEMORANDUM OF DECISION OF THE SUPERIOR COURT FOR FAIRFIELD COUNTY

SUPERIOR COURT

FAIRFIELD COUNTY

No. 111476

ALBERT BLOOM,

—vs.—

CHARLES LUNDBERG, AN OFFICER OF THE CONNECTICUT STATE POLICE.

MEMORANDUM OF DECISION

The facts in this case are as follows:

1. The Respondent is an officer of the Connecticut State Police.

2. On March 23, 1937, the complainant was duly convicted in the County Court within and for the County of Westchester in the State of New York for the crime of forgery, second degree and was sentenced to imprisonment at Sing Sing State Prison at Ossining, New York at hard labor under an indeterminate sentence, the maximum of such imprisonment to be Twenty Years, No Months and the minimum Ten Years, No Months.

3. On December 6, 1954, the complainant was released on parole by the parole authorities of the State of New

York and pursuant to the terms and conditions of a parole agreement entered into by the said complainant on December 3, 1954, he was permitted to leave the State of New York and go to the State of Massachusetts.

4. Under the terms and conditions of said parole agreement dated December 3, 1954, the complainant agreed that if arrested in another state during the period of his parole, he would waive extradition and would not resist being returned by the parole authorities to the State of New York.

5. On April 21, 1958, the complainant was duly convicted in the United States District Court for the District of Massachusetts for the offense of unlawful possession of stolen mail and forging and uttering United States Treasury checks (19 count) and was sentenced to imprisonment for a period of Two Years and thereafter on April 25, 1958, he was delivered to the Federal Correctional Institute at Danbury, Connecticut to commence service of the sentence.

6. On April 7, 1958, a warrant was issued by the parole authorities of the State of New York for the retaking of the complainant as a parole violator.

7. On May 6, 1958, the complainant executed a waiver of extradition in which he agreed to waive all legal and other rights that he had in the State of Connecticut to oppose extradition to the State of New York.

8. His Excellency, the Governor of the State of Connecticut, on requisition of His Excellency, the Governor of the State of New York, has issued a warrant dated

Appendix A
Memorandum of Decision

December 8, 1959 directing the police authorities of the State of Connecticut to arrest and deliver the said Albert Bloom to Frank J. Milane and or Andrew Klein for return to the State of New York.

9. The said Albert Bloom is held in custody by the Respondent by virtue of the said warrant of his Excellency, the Governor of the State of Connecticut.

The plaintiff rests his petition for a writ of habeas corpus upon the following grounds:

1. That although indicted and convicted of the crime of forgery in New York on March 23, 1937, he was never charged with the crime of having been convicted of a felony previously.

2. That his sentence was "It is ordered, that the said Albert Bloom, for the offense aforesaid, whereof he is convicted, he having been heretofore convicted of a felony, be imprisoned in Sing Sing State Prison at Ossining, New York at hard labor under an indeterminate sentence, the maximum of such imprisonment to be Twenty Years, No Months and the minimum Ten Years, No Months."

* * * * *

"This proceeding to challenge an extradition is a summary one to be kept within narrow bonds."

Odell v. Platt 21 Conn. Supplement 13, 15

Counsel for the applicant claimed in his application and argued at the hearing that the detention of return of the

Appendix A
Memorandum of Decision

petitioner would be a violation of his constitutional rights.

It is clearly beyond the authority of this court to pass upon the constitutionality of the sentencing of the petitioner in the State of New York.

If his constitutional rights were invaded, his remedy lies in the courts of the State of New York or in the United States Courts.

Our Supreme Court has said "We did not mean to say before one can be extradited the court of the State where he is found are to determine whether or not he has committed a crime in the demanding state."

Rosenberg v. Slavin 122 C 304, 308

The court further finds that the petitioner was substantially charged in the warrant with a crime and that he is a fugitive from justice of the State of New York.

"An application to the governor for a warrant of extradition presents the twofold question whether the person demanded has been substantially charged with a crime against the laws of the state where he is wanted and whether he is a fugitive from justice from that state."

Ross v. Crofutt 84 C 370, 373

He must therefore be surrendered under the warrant of extradition.

"Such is the command of the Supreme law of the land, which may not be disregarded by any state."

Appelyards v. Mass. 203 U. S. 222, 227

Appendix A
Memorandum of Decision

The petitioner was a parolee, whose waiver was revoked.

"A parolee convicted who has left one state with the express consent of the authorities can nevertheless become a fugitive from justice when his parole has been revoked."

Drinkall v. Spiegel 68 C 441, 450

Therefore the petitioners' efforts to avoid extradition on this ground must fail.

Moulthrope v. Matus 139 C 272, 278

There is in the file an Exhibit A certification by the governor of New York that the petitioner is a parole violator. That is sufficient. It is not for this court to determine whether or not the petitioner has any valid defenses to the charge placed against him by the New York authorities. That is a question for the State of New York.

Cappola v. Platt 123 C 38
Moulthrope v. Matus 139, 272

The petition of a writ of habeas corpus is dismissed and judgment is rendered for the defendant.

HEALEY, *J.*

Filed July 6, 1960.

Appendix A

JUDGMENT OF THE SUPERIOR COURT FOR FAIRFIELD COUNTY

STATE OF CONNECTICUT
SUPERIOR COURT
COUNTY OF FAIRFIELD
July 6, 1950
No. 111476

ALBERT BLOOM, of the City of Boston and Commonwealth of Massachusetts,

—vs.—

CHARLES LUNDBURG, a trooper of the Connecticut State Police at the Ridgefield Barracks, his superiors or assistants, the agent or agents of the State of New York, and LOUIS W. WELLS, as State's Attorney in and for the County of Fairfield.

Present,

HON. FRANK T. HEALEY,

Judge.

JUDGMENT

This action dated April 26, 1950, praying for a writ of habeas corpus under Section 54-166 of the Connecticut General Statutes, was presented to this Court on the 27th day of April, 1950. The Court thereupon issued its writ of habeas corpus ordering the defendant Charles Lundburg

Appendix A
Judgment

to show the cause of the alleged restraint of the plaintiff's liberty, at the Court-House in the County of Fairfield, on the 18th day of May, 1960, at ten o'clock in the forenoon, and further ordering that the Clerk of said Court cause a true and attested copy of said order to be sent via registered mail to Messrs. Francis J. Mulligan and Andrew Klein, Division of Parole, State of New York, and to Louis W. Willis, State's Attorney for Fairfield County.

Said action came thence to May 20, 1960, when the plaintiff filed his amended application, thence to May 23, 1960, when the defendants filed their return to said writ, and thence to the present time when the parties appeared and were at issue as on file.

The Court, having heard the parties, finds the issues for the defendants.

Whereupon it is Adjudged that said petition for a writ of habeas corpus be and the same hereby is dismissed.

HEALEY,
Judge

APPENDIX B

OPINION OF THE SUPREME COURT OF ERRORS OF CONNECTICUT

SUPREME COURT OF ERRORS

October Term, 1961

Decision announced Dec. 5, 1961

AUBREY BLOOM v. CHARLES L. UNDERBERG

Habeas corpus alleging unlawful imprisonment, brought to the Superior Court in Fairfield County and tried to the court, *Healey, J.*; judgment dismissing the writ, from which the plaintiff appealed. *No error.*

Jacob D. Zeldes, with whom were *Arnold L. Bar* and, on the brief, *David Goldstein*, for the appellant (plaintiff).

Otto J. Saur, state's attorney, with whom, on the brief, was *John F. McGowan*, assistant state's attorney, for the appellee (defendant).

MURPHY, J. The plaintiff obtained a writ of habeas corpus to test the legality of his arrest and detention under a warrant issued by the governor of Connecticut on the requisition of the governor of New York, who sought his extradition to that state as a fugitive from justice. The court held that the requisition and the supporting documents were in accordance with the requirements of law and dismissed the writ. The plaintiff has appealed.

The court determined the matter on the sufficiency of the extradition papers, implemented by two waivers of extradition signed by the plaintiff. As the waivers are not material to the principal issue and the defendant has not

urged their considerations we shall disregard them.[1] No testimony was presented by either side. The finding of the court was based on certain exhibits which were introduced in evidence. They included the New York requisition papers; the arrest warrant based thereon, issued by the governor of Connecticut with endorsements of service by the defendant, a state policeman; and three other documents to which specific reference is unnecessary.

With such corrections in the finding as the plaintiff is entitled to, the salient facts are these: The plaintiff was convicted in the state of New York on March 23, 1937, of the crime of forgery in the second degree and was sentenced as a second offender to an indeterminate sentence in prison for not less than ten years and not more than twenty years. He was confined under this sentence until July 27, 1943, when he was conditionally released on parole, but on June 19, 1945, he was declared delinquent and on June 18, 1946, was reimprisoned. He was again released on parole on December 6, 1954. He had then served fourteen years, nine months and twenty-two days. He was again, on March 3, 1957, declared delinquent and a parole violator. In 1958, in the United States District Court in Massachusetts, he was convicted of nineteen counts of unlawful possession of stolen mail and of forging and uttering United States treasury checks and was sentenced to imprisonment for two years and confined in the federal correctional institute in Danbury, Connecticut. On his release from that institution, he was arrested under the warrant issued by the governor of Connecticut. It is the claim of the plaintiff that the maximum penalty for a conviction of

[1] A motion by the plaintiff to strike and expunge an appendix to the defendant's brief has been granted

the crime of forgery in the second degree in New York is imprisonment for ten years and that he has served in excess of that term and therefore is not a fugitive from justice subject to extradition to New York. A claim advanced by him in the trial court that he could not be extradited from Connecticut because he was in this state involuntarily to serve the sentence imposed by the federal court has been abandoned.

Article IV, 2, of the United States constitution provides that a "Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime." To implement the operation of this provision and to provide for its execution, Congress has enacted an extradition statute; 18 U.S.C. §3182. In 1957, Connecticut adopted the Uniform Criminal Extradition Act. General Statutes §§ 54-157–54-185. The purpose of the act is to make uniform the law of those states which enact it. It also codifies the procedural features relating to extradition and serves to expedite the execution of both the constitutional provision and the federal law. *Cook* v. *Ridger*, 215 Ind. 500, 501, 20 N.E.2d 933.

The plaintiff concedes that a paroled convict who violates his parole can be extradited from an asylum state to serve the unexpired portion of the sentence imposed in the demanding state. He contends that the requisition and supporting papers from New York do not include any copy of an information or indictment charging him with being a second offender; that, therefore, the only valid sentence which could have been imposed, on the basis of these

papers, was that applicable to a first offender; and that the lack of a copy of an information or indictment charging him with being a second offender is fatal to the extradition demand. There is no such information or indictment among the papers submitted to the governor of Connecticut. Whether one is essential to warrant extradition is the sole question we have to decide.

The penal law of New York provides that forgery in the second degree is punishable by imprisonment for a term not exceeding ten years. N.Y. Pen. Law 888. The punishment for a person convicted of forgery in the second degree who had previously been convicted of a felony must be an indeterminate term, the minimum of which must be not less than one-half of the longest term prescribed on a first conviction, and the maximum not longer than twice such longest term. Id. 1941. The procedure under which a subsequent offender is to be arraigned and sentenced is governed by 1943 of the Penal Law, which provides that an information shall be filed either after sentence or after conviction. The accused person then has to be presented in court, informed of the allegations in the information and advised of his rights, one of which, in the event that he does not admit the allegations, is to have a jury decide if he is a second offender.

The supporting papers to the requisition included a copy of the indictment of the plaintiff for forgery in the second degree and a copy of the judgment of March 23, 1937, reciting the conviction and imposing a sentence. The latter document recited the plaintiff's conviction by plea of guilty to the charge contained in the indictment and concluded as follows: "Ordered and Adjudged by the Court, that the said Albert Bloom, for the offense aforesaid, whereof he is convicted, he having been heretofore convicted of a felony, be imprisoned in the Sing Sing State Prison at

Ossining, N.Y., at hard labor, under an indeterminate sentence, the maximum of such imprisonment to be Twenty Years No Months, and the minimum Ten Years No Months." The governor of New York certified the supporting papers as authentic and duly authenticated in accordance with the laws of that state. He also stated in his demand that the plaintiff was present in that state at the time the crime was committed, was convicted and sentenced, broke the terms of his parole, and thereafter fled from the justice of New York state and was in Connecticut.

The plaintiff was convicted and sentenced for forgery in the second degree. By reason of the fact that he was a second offender, the punishment for that crime was greater than it would have been for a first offense. See *State* v. *Holloway*, 144 Conn. 295, 301, 130 A.2d 562; *State* v. *Mead*, 130 Conn. 106, 108, 32 A.2d 273; *State* v. *Delmonte*, 110 Conn. 298, 300, 147 A. 825. The punishment is for the new crime only, but is the heavier if the offender is a habitual criminal. *McDonald* v. *Massachusetts*, 180 U.S. 311, 312, 21 S. Ct. 389, 45 L. Ed. 542. The fact of the former conviction is an element merely in determining the degree of criminality of the second offense. "The Legislature of this State has said that one who commits a crime, after having been convicted of another crime, is a greater offender than as though he had not previously been convicted, and the punishment inflicted is solely for the second offense, to which a greater degree of criminality is thus attached." *People* v. *Carlesi*, 154 App. Div. 481, 487, 139 N.Y.S. 309, aff'd, 208 N.Y. 547, 101 N.E. 1114 (aff'd, 233 U.S. 51, 34 S. Ct. 576, 58 L. Ed. 843; *People ex rel. Prisament* v. *Brophy*, 287 N.Y. 132, 135, 38 N.E.2d 468; *Graham* v. *West Virginia*, 224 U.S. 616, 624, 32 S. Ct. 583, 56 L. Ed. 917. The second offender statute in New York does not create a new crime

any more than our Indeterminate Sentence Act (General Statutes §54-121) does. The facts which are necessary to enable the court to determine whether an accused is a second offender are not necessarily or ordinarily any part of the crime which has been charged. They are collateral matters and, whatever measure of punishment is adopted as a result of these collateral facts, the offense as a criminal offense remains unchanged. *State v. Reilly*, 94 Conn. 698, 702, 110 A. 550.

General Statutes §54-159 enumerates the requirements for recognition by the governor of Connecticut of the extradition demand by the executive authority of another state. So far as it applies to this case, the statute provides that no such demand shall be recognized unless it is in writing and alleges that the accused was present in the demanding state at the time of the commission of the crime and thereafter fled from the state, and unless it is accompanied by a copy of the indictment found or "a copy of a judgment of conviction or of a sentence imposed in execution thereof," together with a statement by the executive authority of the demanding state that the person claimed has broken the terms of his parole. The documents submitted by the governor of New York contain all of these requirements. So long as the copy of the judgment recited the plaintiff's conviction of the crime of forgery in the second degree and his sentence as a second offender because he had previously been convicted of a felony, a copy of the information upon which he was presented as a second offender was not essential to the validity of the extradition request.

There is no error.

In this opinion the other judges concurred.

Appendix B

JUDGMENT OF THE SUPREME COURT OF ERRORS OF CONNECTICUT

At a Supreme Court of Errors, holden at Hartford on the first Tuesday of October 1961

On Appeal from the Superior Court

No. 5130

ALBERT BLOOM,

—vs.—

CHARLES LUNDBERG, *et al.*

This appeal by the Plaintiff, claiming error in the process, record and judgment, and in the proceedings and decision of the Court on questions of law arising in the trial, as may appear in the certified transcript of record and finding of facts on file in this Court, was allowed by the Superior Court, for Fairfield County, on the 1st day of September 1960 and came to this Court at its session at Hartford, on the first Tuesday of March, 1961, and thence by continuance to the present term, when the parties appeared and were fully heard.

And now this Court finds that in the record, judgment and proceedings of said Superior Court, there is no error.

It is therefore considered and adjudged that there is no error.

By the Court,

Date of Judgment November 21, 1961

Decision announced December 5, 1961

J. LEO CAMPANA
Clerk

APPENDIX C

APPLICATION TO STAY JUDGMENT AND ORDER

SUPREME COURT OF ERRORS
STATE OF CONNECTICUT

December 5, 1961

No. 5130

ALBERT BLOOM

—v.—

CHARLES LUNDBURG, *et al.*

APPLICATION TO STAY JUDGMENT

1. On December 5, 1961, this Court announced its decision affirming the judgment of the court below against petitioner and denying petitioner's claim based, *inter alia*, upon the United States Constitution and the laws of the United States, that petitioner was not substantially charged with a crime and was not a fugitive from justice.

2. The United States constitutional and statutory provisions upon which petitioner relies, United States Constitution Article IV, § 2, Clause 2, and Laws of the United States, 18 U.S.C. § 3182, were exerted timely in the trial court (R. 18). Both the Superior Court and this Court rejected petitioner's claims based upon these constitutional and statutory provisions.

3. In the interpretation and construction of the provisions of the United States Constitution and the Laws of

the United States, the supreme judicial authority is the United States Supreme Court. *International Union of Electrical Radio & Machine Workers* v. *General Electric Co.*, Vol. XXII, No. 89, Conn. Law Journal 4; 6 (Oct. 10, 1961).

4. Petitioner raises substantial federal questions and does not make this application for the purposes of delay. In both the Superior Court and Supreme Court of Errors petitioner has acted promptly and without the extension of time in which to file pleadings or briefs:

(a) Although a longer period of time was requested by petitioner, the Superior Court, on Friday, May 20, 1960, directed petitioner to file his brief on the merits on Monday, May 23, 1960. Petitioner's brief was filed timely. Respondent filed no brief.

(b) Respondent sought and obtained a two week extension of time to file his counter-finding in this Court. Petitioner requested no extension of time to file his request for finding and draft finding in this Court.

(c) Respondent obtained a six week extension to file his brief in this Court. Petitioner obtained no extension to file his brief and reply brief in this Court.

5. Under the applicable laws of the United States, 28 U.S.C. §2101(c), petitioner's petition for writ of certiorari to review the judgment of this Court need not be filed until 90 days after entry of judgment in this Court.

6. Upon the judgment of this Court being effective and petitioner being surrendered to the authorities of the State

Appendix C
Order

of New York, petitioner's right not to be extradited because of the provisions of the United States Constitution and the Laws of the United States upon which he relies will be surrendered and the issues in this case will become moot.

WHEREFORE, petitioner applies to this Court, or any Justice of this Court, to stay the judgment of this Court (1) until and including February 15, 1962, and (2) if petitioner files his petition for a writ of certiorari in the United States Supreme Court to review the judgment of this Court on or before February 15, 1962, until final disposition of the cause by the United States Supreme Court.

The Petitioner,

By GOLDSTEIN AND PECK
His Attorneys

ORDER

The above application having been heard, the judgment of this Court is stayed until and including February 15, 1962 and, if petitioner files his petition for a writ of certiorari in the United States Supreme Court, until final disposition of the case by the United States Supreme Court.

JAMES E. MURPHY
An Associate Justice
of the Supreme Court
of Errors of Connecticut

APPENDIX D

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., Art. IV, §2, Cl. 2:

"A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime."

18 U.S.C. §3182:

"Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged. June 25, 1948, c. 645, 62 Stat. 822."

Appendix D
Constitutional and Statutory Provisions Involved

U.S. Const., Amend. 14:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

APPENDIX E

THE ISSUES AND CLAIMS OF LAW AS FRAMED BY PETITIONER FOR THE SUPREME COURT OF ERRORS OF CONNECTICUT

[Excerpt from Brief for Petitioner Filed in the Supreme Court of Errors of Connecticut.]

ISSUES.

This appeal involves the validity of an extradition warrant by which petitioner is restrained of his liberty. The issues raised by this appeal are:

1. When the supporting documents furnished by the demanding state demonstrate that petitioner is not substantially charged with the crime and is not a fugitive from justice, is the certification by the demanding state's governor to the contrary a sufficient basis upon which petitioner can be extradited?

[Answered in the affirmative by the court below.]

2. When the supporting documents furnished by the demanding state demonstrate that petitioner had served his validly imposed sentence in the demanding state when released several years before his apprehension in Connecticut, is petitioner one substantially charged with a crime and a fugitive from justice within the constitutional and statutory provisions regulating extradition?

[Not answered by the court below.]

3. When the demanding state initiates an extradition request, can petitioner, who had served his entire valid sentence in the demanding state, be foreclosed from exerting

Appendix E
Issues

defenses to his extradition because of the previous execution of purported waivers—one of which is valid only "during the period of my parole" and the other of which was executed without consideration while petitioner was in prison and without the aid of counsel?

[Answered in the affirmative by the court below]

[Excerpt from the Finding Filed by the Connecticut Trial Court for Use in the Appeal to the Supreme Court of Errors.]

Petitioner made the following claims of law respecting the judgment to be rendered, upon which the Court ruled as hereinafter stated.

19. Insofar as petitioner had served the entire valid sentence imposed upon him by the State of New York on March 23, 1937, as apparent from the supporting documents (Pet. Ex. A) furnished by His Excellency, the Governor of New York, petitioner was not substantially charged with a crime and was not a fugitive from justice within the meaning of the U.S. Constitution, Art. 4, Sec. 2, Clause 2, and the laws of the United States, 18 U.S.C. Sec. 3182, and within the meaning of the laws of the State of Connecticut, Secs. 54-157 through 54-185 (Conn. Gen. Stat., 1958 Rev.), and his restraint by virtue of the warrant issued by His Excellency, the Governor of the State of Connecticut, is therefore illegal, invalid and unconstitutional.

APPENDIX F

MAY 23, 1937 JUDGMENT OF COUNTY COURT OF WESTCHESTER COUNTY

At a Term of the County Court of the County of Westchester,

held at the County Court House, in City of White Plains, New York, on March 23, 1937

Present: HON. GERALD NOLAN, County Judge

The People of the State of New York

against

Albert Bloom Defendant

Indictment No accuses defendant with crime of Forgery 2nd degree

W.F.Horan A.D.A.

Edward H. Innet For Deft

The aforesaid Albert Bloom having been indicted for the crime of Forgery 2nd degree and having been convicted of the crime of as charged

a plea of guilty and he having answered all questions under oath

and the District Attorney on 19 having filed an Information (1943 Penal Law) accusing said X of having been previously convicted of certain felon- as in said information set forth, and said X on arraignment in open Court having been informed of the allegations contained in said Information and of his right to admit or deny, or remain silent to said allegations, and that if he denied same or remained silent, that he had a right to a trial by jury as to the truth thereof according to law, and he having stated that he is the same person mentioned in said allegations—denied said allegations—remained silent as to said allegations—and a jury having been impanelled and a trial having been had and the jury, by its verdict, having found the defendant to be the same person mentioned in said allegations X X

and it appearing to said defendant has been previously convicted of felon as specified

he had a right to a trial by jury as to the truth thereof according to law, and he having stated that he is the same person mentioned in said allegations—denied said allegations—remained silent as to said allegations—and a jury having been impanelled and a trial having been had and the jury, by its verdict, having found the defendant to be the same person mentioned in said allegations

and it appearing that said defendant has been previously convicted of felony as specified in Section 1941 and 1942 of the Penal Law the Court now adjudicates the defendant to be a felony offender.

and the defendant having had two days notice of sentence (470 CCP), now on being arraigned for sentence and being asked if he had any legal cause to show why judgment should not be pronounced against him (480 CCP) and he answering "NO";

Ordered and Adjudged *by the Court,* that the said Albert Bloom, for the offense aforesaid, whereof he is convicted, he having been heretofore convicted of a felony, be imprisoned in the Sing Sing State Prison at Ossining, N.Y., at hard labor, under an indeterminate sentence, the maximum of such imprisonment to be Twenty Years No Months, and the minimum Ten Years No Months.

A TRUE EXTRACT FROM THE MINUTES

Edward Lie Eu
CLERK

[This judgment also appears as page 16 of petitioner's appendix filed in the Supreme Court of Errors (Pet. St. Ct. App. 16).]